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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TOAN THAI et al.,

Plaintiffs and Appellants,

v.

THIEN K. TRAN et al.,

Defendants and Respondents.

G056770

(Super. Ct. Nos. 30-2017-00958200  
& 30-2017-00958403)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, James L. Crandall, Judge. Motion to dismiss appeal granted; appeal dismissed.

Toan Quy Thai and Minh Nguyet Thi Nguyen in pro. per. for Plaintiffs and Appellants.

Andrew D. Weiss in pro. per.; Law Offices of Andrew D. Weiss and Andrew D. Weiss for Defendants and Respondents.

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THE COURT:\*

This is another appeal involving Anthony Nguyen (“Nguyen”), Toan Quy Thai (“Toan Thai”) and Minh Nguyet Thi Nguyen (“Minh Nguyen”) arising from six separate state court actions concerning the same general dispute. The dispute, which had its origins in a failed romance between Nguyen and Tu Hien Nguyen (“Hien”), the former wife of Thien Tran (“Tran”), has ensnared Tran’s attorney, Andrew D. Weiss, other attorneys, paralegals, and several bench officers in Nguyen’s incessant litigation. Along the way, in addition to the state court actions, there have been numerous federal court actions filed by Nguyen, Toan Thai and Minh Nguyen. Nguyen, Toan Thai and Minh Nguyen have been declared vexatious litigants in both state and federal courts.<sup>1</sup>

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\* Before Fybel, Acting P. J., Thompson, J., and Goethals, J.

<sup>1</sup> There have been 13 other appeals in this court arising from Orange County Superior Court case Nos. 30-2014-00722268, 30-2014-00722873, 30-2014-00729544, 30-2017-00906325, 30-2017-00958200, and 30-2017-00958403 including: *Tran v. Nguyen* (Nov. 16, 2015, G051373) [dismissed]; *Nguyen v. Tran* (Nov. 15, 2015, G051378) [dismissed]; *Nguyen v. Tran et al.* (May 4, 2017, G054734 [dismissed]; *Nguyen v. Tran* (May 30, 2017, G054876) [dismissed]; *Tran v. Nguyen* (January 7, 2019, G055022) [nonpub. opn., affirmed]; *Tran v. Nguyen* (January 7, 2019, G055078) [nonpub. opn., affirmed]; *Nguyen v. Tran et al.* (January 7, 2019, G055097) [nonpub. opn., affirmed]; *Nguyen v. Tran et al.* (January 7, 2019, G055130) [nonpub. opn., affirmed]; *Nguyen v. Tran* (Nov. 30, 2017, G055427) [dismissed]; *Nguyen v. Tran* (Sept. 27, 2017, G055428) [dismissed]; *Weiss et al. v. Thai et al.* (Oct. 22, 2018, G056228) [dismissed]; *Nguyen et al. v. Duong et al.* (Oct. 22, 2018, G056778) [dismissed]; and *Nguyen et al. v. Tran et al.* (G057058) [pending].

A 15th appeal arising from Orange County Superior Court case number 30-2017-00906325, was filed by Minh Nguyen alone (Sept. 5, 2018, G056632) [dismissed]. Two more appellate proceedings—the 16th and 17th—were filed by Nguyen, going by the name Tuan Nguyen, arising from a separate trial court proceeding concerning another woman with whom Nguyen once had a romantic relationship ending with her obtaining a domestic violence restraining order against him (16V000883), and in which he made similar allegations of terrorist activities by the plaintiff. (*Nguyen v. The Superior Court of Orange County et al.* (Sept. 15, 2016, G053946) [pet. denied]; *Nguyen v. Nguyen* (January 7, 2019, G054555) [nonpub. opn., affirmed].

The two superior court cases that produced the current appeal began with largely unintelligible complaints filed by Nguyen, later joined by Toan Thai and Minh Nguyen, against Weiss, Tran, Hien, and several other persons associated with Weiss and Tran, rife with allegations that the defendants are agents of various communist organizations, involved in money laundering for terrorist groups, participating in sham marriage operations, and engaging in all sorts of unseemly and criminal conduct. There were cross-complaints by the various defendants alleging malicious prosecution among other causes of action.

On September 4, 2018, Nguyen, Toan Thai and Minh Nguyen, filed a notice of appeal from numerous orders entered in superior court case Nos. 30-2017-00958200 and 30-2017-00958403 on five different dates in the summer of 2018. Because each of the appellants have been declared vexatious litigants and are subject to prefiling orders entered pursuant to Code of Civil Procedure section 391.7, the Presiding Justice of this court ordered them to file a request for permission to file their appeal. The court specifically ordered that the request for permission must explain as to each of the appellants the exact orders from which he or she appealed, why that order was appealable as to that specific appellant, and why the appeal as to that specific appellant had merit. (*In re R.H.* (2009) 170 Cal.App.4th 678, 708, disapproved on another ground in *John v. Superior Court* (2016) 63 Cal.4th 91, 98-100 [request must provide “facts and legal authority telling the court with specificity why his appeal or petition has merit”].) Although the resulting request for permission fell far short of the mark, because included within the numerous orders listed in the notice of appeal were the orders entered in case No. 30-2017-00958403 declaring Toan Thai and Minh Nguyen to be vexatious litigants, those two appellants only were granted permission to proceed with their appeal to permit them to challenge the vexatious litigant orders affecting them. Nguyen, who was declared a vexatious litigant in a different action in 2014, and as to whom the prefiling order has long been final, was not granted permission to proceed with this

appeal. This appeal was dismissed as to Nguyen on October 19, 2018, and his dismissal from this appeal has become final.

In the end, this appeal by Toan Thai and Minh Nguyen was allowed to proceed as to the following orders entered in case No. 30-2017-00958403: (1) the July 5, 2018 order granting respondents' motion filed on May 2, 2018 to declare Toan Thai and Minh Nguyen vexatious litigants and ordering them to post bond to proceed with the action; (2) the vexatious litigant prefiling order entered against Toan Thai and Minh Nguyen on July 9, 2018; and (3) the order dated July 31, 2018 granting a motion to dismiss the complaint due to their failure to post security per Code of Civil Procedure section 391.4.

Toan Thai and Minh Nguyen filed their opening brief on January 29, 2019. Respondents filed a motion to dismiss the appeal because the appellant's opening brief fails to make any cogent argument concerning the orders on which the appeal was allowed to proceed—namely the orders declaring Toan Thai and Minh Nguyen to be vexatious litigants and requiring them to post security to proceed with their action, entering a prefiling order against them, and dismissing their action when they failed to post security.<sup>2</sup>

Respondents' motion to dismiss is well-taken and, based on the opening brief, we must grant the motion and dismiss the appeal. The law is well-established: a trial court's judgment is presumed to be correct on appeal, and it is the burden of the party challenging it to affirmatively demonstrate prejudicial error. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) “When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other

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<sup>2</sup> In response to respondents' motion, appellants filed an opposition, which does not address any of respondents' arguments, but simply makes additional allegations of criminal conduct by respondents. Appellants claim they were not served with the motion to dismiss, but respondents' motion includes a proper proof of service by mail of the motion at appellants' address of record.

litigants and attorneys. . . . Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.’ [Citation.]” (*Id.* at pp. 1125-1126.) “‘The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel [or the litigant if, as here, the litigant chooses to represent himself]. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.’ [Citation.]” (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) An appellant’s failure to articulate intelligible legal arguments in the opening brief may be deemed an abandonment of the appeal justifying dismissal. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) Likewise, a failure to present arguments with references to the record and citation to legal authority can result in forfeiture of any contention that could have been raised on appeal. (Cal. Rules of Court, rule 8.204(a)(1)(B) & (C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*).)

We have reviewed and considered the opening brief filed in this matter. Appellants’ brief is indecipherable and although Nguyen was not granted permission to proceed with this appeal, appears to be primarily a reproduction of his complaint and abundant filings in this court in other appeals. There is no cogent statement of the nature of the action, the relief sought in the trial court, and the judgment or orders appealed from; no explanation as to why any of the orders are appealable; and no coherent summary of the significant facts limited to matters in the record. There is not a single citation to the over 5,000-page record appellants designated for this appeal. We have reviewed the record and find it does not contain, nor did appellants designate for inclusion in the record, respondents’ motion to declare them vexatious litigants—the very motion that resulted in the orders on appeal. Appellants include a table of authorities in their brief, but none of those authorities are discussed in the argument section of their brief and do not appear to pertain to the vexatious litigant laws. Although in the

“statement of the case” section of their brief, appellants make reference to the “motion to post security,” nowhere do they explain the basis for the motion to declare them vexatious litigants, engage in any argument or legal discussion concerning appellate review of the vexatious litigant orders, or offer any explanation as to why the orders should be disturbed. Appellants’ status as self-represented litigants does not relieve them of their obligation to present intelligible arguments supported by the record and legal authority (*Nwosu, supra*, 122 Cal.App.4th at pp. 1246-1247), and their failure to carry their appellate burden to identify any legal error in the trial court’s rulings requires dismissal of this appeal.

#### DISPOSITION

The motion to dismiss is granted. The appeal is dismissed. Respondents are awarded their costs on appeal.